IN THE

# Supreme Court of the United States

October Term, 1949.

No. 138

PAUL W. SAMPSELL, as Trustee in Bankruptcy for the Estate of C. A. Reed Furniture Company, a corporation, Bankrupt,

*Petitioner,*

vs.

LAWRENCE WAREHOUSE COMPANY, a corporation,

*Respondent.*

## PETITIONER'S REPLY BRIEF.

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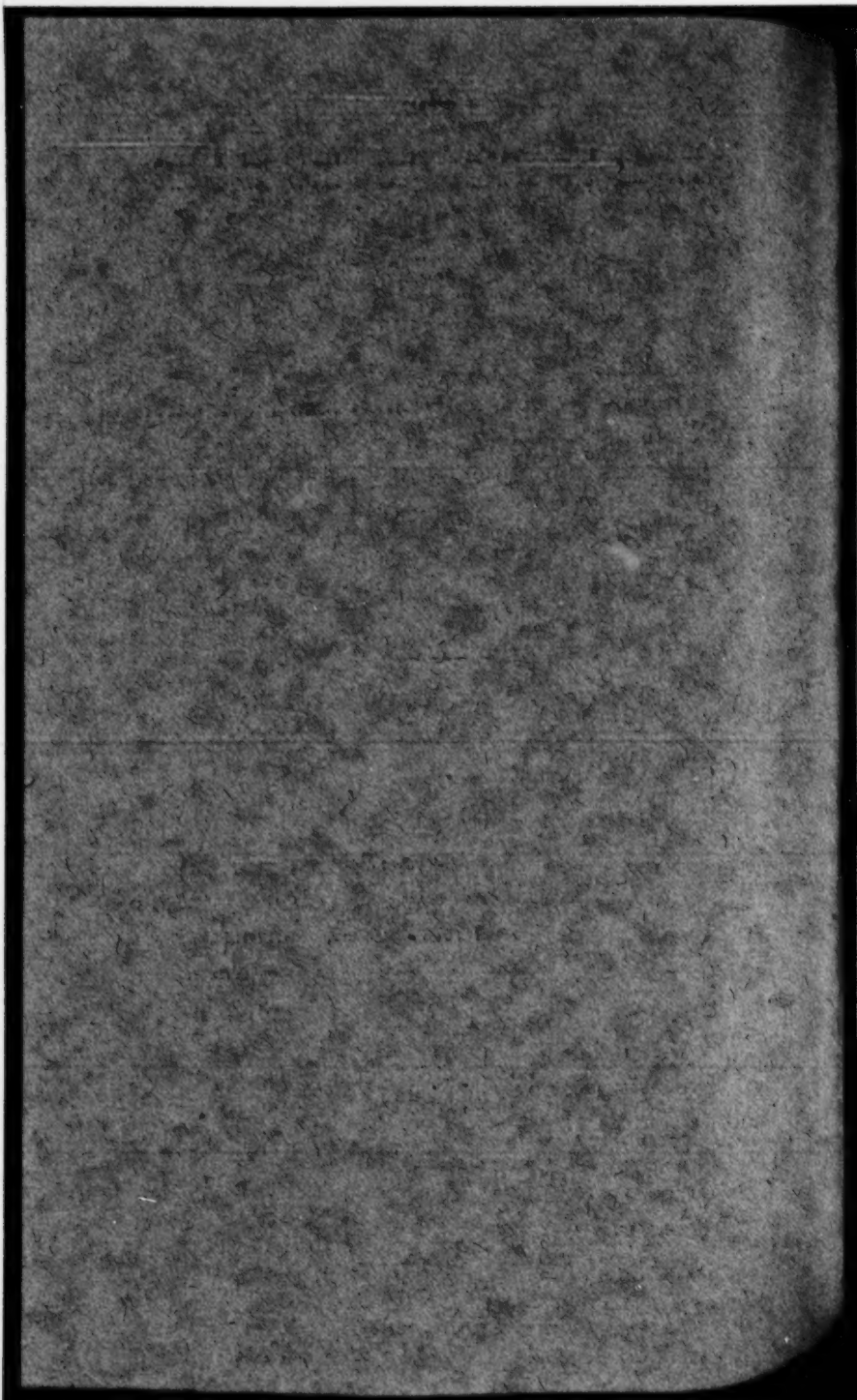

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## PETITIONER'S REPLY BRIEF.

Respondent seeks to minimize the importance of the questions involved in this proceeding by stating that four federal judges have already agreed as to a proper decision. The result was the same in each instance but the proposition on which the District Court based its decision was not embraced by the Circuit Court of Appeals. [R. 62-69.] Neither had the District Court approved the grounds upon which the Circuit Court predicated its ruling. [R. 49-50.]

The District Court reasoned that, since the criminal statute also provided a civil remedy for violation of the statute, the warehouse receipts were not void. The fallacy of such reasoning is fully dealt with on pages 20 to 24 of Petitioner's Brief in Support of His Petition.

The Circuit Court predicated its decision upon the doctrine of repeal by implication. Such a proposition cannot be invoked in one instance and be disregarded in another. Either the Warehouse Receipts Act constitutes the entire law on the subject of warehousing and, therefore, repeals all other statutes on the subject, or it repeals no prior statutes that are not directly repugnant to its provisions. The Civil Code sections which petitioner invokes are not repugnant to the Warehouse Receipts Act.

Respondent must recognize this fact, so it proceeds to argue that since the Warehouse Receipts Act is a fairly comprehensive statute, it repeals all other statutes touching the subject of warehousing.

It is important that the provisions of the Bankruptcy Act be not nullified by the preferment as lien claimants of persons whose liens are void. It is likewise vital that state statutes be not summarily brushed aside by reasoning which destroys the entire framework of many different statutes dealing with the subject.

**Respondent's Argument as to Repeal by Implication Would Destroy Many Statutes Not Embodied in the Warehouse Receipts Act.**

Respondent must recognize that the Civil Code sections are not repugnant to the provisions of the Warehouse Receipts Act. The two cannot only be read together, but they supplement and support each other. So, respondent proceeds to the argument that a uniform act dealing with a subject repeals other statutes dealing with the subject. This is a dangerous proposition to invoke in these times when so many things are dealt with by statute. It would be particularly hazardous in the field of Federal Legisla-

tion where the same matters are treated under a maze of different statutes.

If a uniform act automatically repeals all prior enactments on the subject regardless of whether they are repugnant, then what is the purpose of inserting a provision in the uniform act that only provisions in prior statutes which are inconsistent are repealed? Section 60 of the Warehouse Receipts Act, repealing such conflicting provisions, would be superfluous. In fact, its provisions would be nullified if the Act automatically repealed other statutes regardless of whether they were inconsistent or repugnant.

If prior statutes not embodied in the Act are automatically repealed, then what becomes of the legislative power to enact legislation dealing with the subject which is not embodied as a part of the uniform act? The same principle which operates to kill the prior statutes must likewise devitalize subsequent statutes.

There are at least two instances where the California Legislature has dealt with warehousing since the enactment of the Warehouse Receipts Act and which are not embodied in that Act. One of these is Section 3440.5 of the Civil Code, which specifies the requirements for a valid transfer of warehouse receipts covering the stock in trade of a dealer or merchant. This is the section which the legislature revitalized by amendment after the Circuit Court had said in the case of *Heffron v. Bank of America*, 113 Fed. 239, that all valid laws relating to warehousing must be embodied in the Warehouse Receipts Act.

Another comprehensive bit of legislation pertaining to the warehousing of agricultural products is contained in Sections 1245 to 1258 of the California Agricultural Code

enacted in 1933 from prior statutes adopted in 1921. These provisions profusely overlap the provisions of the Warehouse Receipts Act, as they deal with the contents of warehouse receipts and the conduct of warehousemen, yet no one would contend that they were null because not embodied in the Warehouse Receipts Act, or that they operated to repeal such Act in so far as the warehousing of agricultural products was concerned.

The authorities cited on pages 10 to 15 of Petitioner's Brief in Support of the Petition show that the doctrine of repeal by implication has no place except in instances of irreconcilable repugnancy between the two statutes.

Respondent leans heavily upon the case of *Jewett v. City Transfer & Storage Co.*, 128 Cal. App. 556, to support its contention that the Warehouse Receipts Act automatically repealed all prior statutes relating to warehousing. That case did not decide such a question. It held only that where the Warehouse Receipts Act provided a remedy, by sale upon notice, for enforcing a warehouseman's lien for storage, and Section 3052 of the Civil Code provided the same remedy but on a different notice, that the provisions of the Warehouse Receipts Act as to the notice required should govern.

The Court then proceeded to indulge in some careless dicta. It said, at page 562:

> "Considering the provisions of the statute known as the Warehouse Receipts Act, it is apparent that its purpose was to revise the entire subject matter relating to the general business of conducting a public warehouse. As hereinbefore indicated, if by any legal reason it may be held that any of the provisions of sections 3051 and 3052 of the Civil Code apply

to the subject of liens of warehousemen, these provisions, as to such liens, must be deemed repealed by the later legislative act."

The Court failed to observe that both of the Civil Code sections were *later* legislative enactments than the provisions in the Warehouse Receipts Act. That Act was adopted in 1909, whereas Sections 3051 and 3052 of the Civil Code were originally enacted in 1872, but each of these two sections was re-enacted by amendment much later than 1909. Section 3051 was re-enacted by amendments in 1911, 1929 and 1935. Section 3052 was re-enacted by amendment in 1927. (See 1941 Ed. Civil Code of California by Deering.)

The *Jewett* case was decided in 1933, so that even a casual glance at the Civil Code would have shown the Court that the Warehouse Receipts Act was not the "later" legislation.

This dicta in the *Jewett* case was ignored in the more recent case of *Norton v. Lyon Van & Storage Co.*, 9 Cal. App. (2d) 199, where the Court held that Sections 3051 and 3052 of the Civil Code did include and apply to warehousemen.

The conduct of the California Courts in continuously treating the Civil Code sections as applying to warehousing transactions cannot be brushed aside. These cases are discussed in the Brief in Support of the Petition.

In concluding this phase of the case it should be noted that this vagrant dicta in the *Jewett* case was responsible for the Circuit Court embarking upon its erroneous course in the case of *Heffron v. Bank of America*, 113 F. (2d) 239.

**The Decisions From Other Jurisdictions as to the Validity of Warehouse Receipts Which Do Not Comply With the Statute Are of No Assistance Because None of Them Involves the Violation of a Criminal Statute.**

Under Part II of its brief (pp. 6 to 9), respondent cites several cases from other jurisdictions, holding that their failure to comply with statutory requirements did not invalidate the warehouse receipts. Not one of these cases involves the effect of violating a criminal statute upon such a document. The cases are, therefore, wholly useless in determining the issue here.

The decisions as to the effect of any document issued in violation of, or which does not comply with, the provisions of a criminal statute are too well settled to merit further discussion. The most recent reassertion of such doctrine is found in *Carter v. Seaboard Finance Company,* 85 A. C. A. 773, at 791 and 792, where the California District Court of Appeal, in a parallel case, held a conditional sales contract void because it did not comply with the statutory requirements as to what information and provisions such contracts should contain.

Under Part IV of its brief (pp. 14 to 18) respondent again pursues the argument that the warehouse receipts were not void even though issued in violation of a criminal statute. The rule is so firmly settled to the contrary that very little time need be spent on that subject. The scattered cases cited by respondent are either from jurisdictions other than California or they deal with revenue statutes as to which the rule is different.

Respondent relies upon the case of *Harris v. Runnels,* 12 How. 79, 13 L. Ed. 901, in which the Court held that

the violation of a statute requiring a certificate as to slaves brought into Mississippi did not preclude the seller from recovering the purchase price of such slaves.

In a similar but later case involving liquor instead of slaves, the Supreme Court in *Miller v. Ammon,* 145 U. S. 421, 36 L. Ed. 759, at 762, applied the rule which it has since followed, and which is directly contrary to the rule followed in the *Runnels* case.

The faint echo of the *Runnels* case which was voiced in a dictum in an early California case has been completely discredited by later decisions. In *Bentley v. Hurlburt,* 153 Cal. 796 (cited and relied upon by respondent), the question was whether the seller of lots could recover the unpaid balance of the purchase price when he had not complied with the statute forbidding the sale of lots referred to in an unrecorded subdivision map. The Court pointed out that there were two conflicting rules on the effect of illegality, citing *Berka v. Woodward,* 125 Cal. 119, as sustaining one rule, and *Harris v. Runnels* (*supra*) as authority for the contrary. It then said that it was unnecessary to select between these because the seller had in fact complied with the statute. Since then the case of *Berka v. Woodward* has become one of the leading and most frequently cited cases in this state on the effect of illegality. It is true that a few states such as Oregon and Montana have disapproved the doctrine of *Berka v. Woodward,* but it is definitely the law in California.

The case of *Uhlmann v. Kin Dow,* 193 Pac. 435 (Ore.) (cited by respondent), is an example of the minority rule that is followed in a few states as are also the cases of *Furlong v. Johnston,* 204 N. Y. Supp. 710, and *Adams Express Co. v. Darden,* 286 Fed. 61 (6th Cir.), also cited by respondent.

The case of *Levison v. Boas,* 150 Cal. 185, does not sustain respondent's position at all. Instead, it invokes the rule contended for by petitioner.

The case of *Wood v. Krepps,* 168 Cal. 382, involved a revenue licensing measure. The effect on contracts which violate a revenue measure has always been different than where the penal statute is of a different character. (See Vol. 17, Corpus Juris Secundum, page 557.)

**There Was No Substantial Compliance With the Requirements of the Statute Requiring That the Warehouse Receipts Show the Rate of Storage Charges.**

Respondent suggests that, because the warehouse receipt contains a statement that it is subject to a lien for storage and other charges as shown by a lease and a contract between the company warehousing the goods and the warehouse company, that this is substantial compliance.

At the outset, it should be noted that reference to this contract and lease is not made for the purpose of ascertaining the rate of storage charges per month or per season. "Storage" is mentioned first following the word "lien," but no rate or amount is shown. It is the "other charges" that reference is made to the contract and lease for. [R. 19.]

The purpose of the statute is not met by having the receipt refer to some other document or record where the storage charges are shown. The statute specifically requires this to be shown on the face of the document and this means on the document itself.

See:

*Cunningham v. Great So. Life Ins. Co.,* Tex. Civ. App., 66 S. W. (2d) 765 at 773;

*Southern Mut. Ins. Co. v. Trunley,* 100 Ga. 296, 27 S. E. 975;

*In re Stoneman,* 146 N. Y. Supp. 172 at 174;

*Investors Syn. v. Willents* (D. C. Minn.), 45 F. (2d) 900 at 902; and

*Burns v. Corn Exch. Natl. Bk. of Omaha,* 33 Wyo. 474, 240 Pac. 683 at 687.

There are many instances where statutes require something to be noted on the face of a document—*e. g.* Rule 223 of the Rules and Regulations of the Securities and Exchange Commission requires the issuer of exempt securities to include a paragraph on the first page of its prospectus stating that the securities have not been registered because they are believed to be exempt. If respondent's argument were applied, that rule could be circumvented by making a reference on the face of the prospectus to some other document, periodical, or record for a statement as to why the securities are not registered.

In support of respondent's contention that there has been substantial compliance, it cites five cases, none of which is pertinent for the reasons hereinafter stated:

In *Standard Bank of Canada v. Lowman,* 1 F. (2d) 935 (D. C., Wash., 1924), it was contended that the rights of the pledgee of warehouse receipts were invalid as against an innocent purchaser of the goods represented by such receipts, for the reason that the warehouse receipts did not comply with the statute governing their issuance. In answer to this, the court said that warehouse receipts

need not be in any particular form, but it then proceeded to state the essential statutory requirements, and in concluding this statement, it said that the evidence showed that the receipts substantially complied wih all those requirements. There was no failure to comply with any of the statutory requirements, nor was the effect of any criminal statute involved—the only question being whether one unit of fundible goods was equivalent to any other unit.

The case of *Boas v. De Pue Warehouse Co.*, 69 Cal. App. 246, did not involve the interpretation or effect of Section 1858(b) and 1858(f) of the California Civil Code. Neither these sections nor the effect of any other criminal statute was brought to the attention of the Court. In the main, the opinion proceeds to state the law on warehousing by referring to Ruling Case Law.

The case of *San Angelo Wine etc. v. South End Warehouse Company*, 19 Cal. App. (2d) 749, in commenting upon the above case, says at page 751:

> "*Boas v. De Pue Warehouse Co.*, 69 Cal. App. 246, 250 (230 Pac. 980), presented the question whether, after the withdrawal of a part of a single bailment, a lien was retained on the residue for the entire amount of charges on the original quantity. In holding that the lien of the entire amount was retained, the court adopted a passage from 27 Ruling Case Law, page 1007, in which incidentally it was said that a warehouseman's lien is specific and not general. So far as any issue before the court was concerned, that statement was merely *dictum*. The language drawn from the volume cited was a statement of the common-law rule; and on page 1008 attention

is directed to the fact that under the uniform warehouse acts the lien is extended to all such charges and claims as are enumerated in section 27 of our act, as amended in 1933."

Neither of the two Minnesota cases, cited on page 20 of respondent's brief involved any criminal statute, and there is, therefore, no parallel between them and the case at bar.

We are not concerned with the question whether a document referred to in one contract may not be a part of the contract. We are concerned with the question whether a statute requiring something to be shown on the face of a warehouse receipt is complied with by reference in the warehouse receipt to some other document or record. The statute is explicit in requiring that it appear on the face of the document.

Respectfully submitted,

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